

AMENDED IN ASSEMBLY APRIL 16, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2273

Introduced by Assembly Member Wieckowski

February 24, 2012

An act to amend Section 1368 of, *and to add Section 2924.1 to*, the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2273, as amended, Wieckowski. Common interest developments: required documents.

~~The~~

(1) *The Davis-Stirling Common Interest Development Act* requires an owner of a separate interest in a common interest development to provide specified documents to a prospective purchaser of that interest. Existing law requires a homeowners' association to provide these documents to the owner of the separate interest within 10 days of the mailing or delivery of the request, and limits the amount of fees charged for the provision of the documents to the association's actual costs to procure, prepare, and reproduce the requested documents.

This bill would additionally provide that an *acquiring* owner of a separate interest shall, within 30 days of ~~transferring~~ *receiving* title, provide to the association's board secretary, agent, manager, or designated representative, a copy of the owner's deed or other document transferring title to the ~~purchaser~~ *acquiring owner* of the separate interest and a written notice of the ~~purchaser's~~ *acquiring owner's* mailing address, except as specified.

(2) *Existing law imposes various requirements that must be satisfied prior to exercising a power of sale under a mortgage or deed of trust.*

This bill would, notwithstanding any other law, impose certain requirements on the sale of a property in a common interest development, as defined, executed under a power of sale contained in any deed of trust or mortgage. Among other things, the bill would require the sale to take place in the county where the property or a portion of the property is located, and would also require the sale to be recorded within 30 days, as specified. The bill would also make the acquiring owner liable for certain unpaid liens recorded on the property if the sale is not recorded according to the provisions above.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1368 of the Civil Code is amended to
 2 read:

3 1368. (a) The owner of a separate interest, other than an owner
 4 subject to the requirements of Section 11018.6 of the Business and
 5 Professions Code, shall, as soon as practicable before transfer of
 6 title to the separate interest or execution of a real property sales
 7 contract therefor, as defined in Section 2985, provide the following
 8 to the prospective purchaser:

9 (1) A copy of the governing documents of the common interest
 10 development, including any operating rules, and including a copy
 11 of the association’s articles of incorporation, or, if not incorporated,
 12 a statement in writing from an authorized representative of the
 13 association that the association is not incorporated.

14 (2) If there is a restriction in the governing documents limiting
 15 the occupancy, residency, or use of a separate interest on the basis
 16 of age in a manner different from that provided in Section 51.3, a
 17 statement that the restriction is only enforceable to the extent
 18 permitted by Section 51.3 and a statement specifying the applicable
 19 provisions of Section 51.3.

20 (3) A copy of the most recent documents distributed pursuant
 21 to Section 1365.

22 (4) A true statement in writing obtained from an authorized
 23 representative of the association as to the amount of the
 24 association’s current regular and special assessments and fees, any
 25 assessments levied upon the owner’s interest in the common
 26 interest development that are unpaid on the date of the statement,

1 and any monetary fines or penalties levied upon the owner's
2 interest and unpaid on the date of the statement. The statement
3 obtained from an authorized representative shall also include true
4 information on late charges, interest, and costs of collection which,
5 as of the date of the statement, are or may be made a lien upon the
6 owner's interest in a common interest development pursuant to
7 Section 1367 or 1367.1.

8 (5) A copy or a summary of any notice previously sent to the
9 owner pursuant to subdivision (h) of Section 1363 that sets forth
10 any alleged violation of the governing documents that remains
11 unresolved at the time of the request. The notice shall not be
12 deemed a waiver of the association's right to enforce the governing
13 documents against the owner or the prospective purchaser of the
14 separate interest with respect to any violation. This paragraph shall
15 not be construed to require an association to inspect an owner's
16 separate interest.

17 (6) A copy of the initial list of defects provided to each member
18 of the association pursuant to Section 1375, unless the association
19 and the builder subsequently enter into a settlement agreement or
20 otherwise resolve the matter and the association complies with
21 Section 1375.1. Disclosure of the initial list of defects pursuant to
22 this paragraph does not waive any privilege attached to the
23 document. The initial list of defects shall also include a statement
24 that a final determination as to whether the list of defects is accurate
25 and complete has not been made.

26 (7) A copy of the latest information provided for in Section
27 1375.1.

28 (8) Any change in the association's current regular and special
29 assessments and fees which have been approved by the
30 association's board of directors, but have not become due and
31 payable as of the date disclosure is provided pursuant to this
32 subdivision.

33 (9) If there is a provision in the governing documents that
34 prohibits the rental or leasing of any of the separate interests in
35 the common interest development to a renter, lessee, or tenant, a
36 statement describing the prohibition and its applicability.

37 (10) If requested by the prospective purchaser, a copy of the
38 minutes of the meetings, excluding meetings held in executive
39 session, of the association's board of directors, conducted over the

1 previous 12 months, that were approved by the association's board
2 of directors.

3 (b) (1) Upon written request, the association shall, within 10
4 days of the mailing or delivery of the request, provide the owner
5 of a separate interest, or any other recipient authorized by the
6 owner, with a copy of the requested documents specified in
7 paragraphs (1) to (10), inclusive, of subdivision (a). Upon receipt
8 of a written request, the association shall provide, on the form
9 described in Section 1368.2, a written or electronic estimate of the
10 fees that will be assessed for providing the requested documents.
11 The documents required to be made available pursuant to this
12 section may be maintained in electronic form, and may be posted
13 on the association's Internet Web site. Requesting parties shall
14 have the option of receiving the documents by electronic
15 transmission if the association maintains the documents in
16 electronic form. The association may collect a reasonable fee based
17 upon the association's actual cost for the procurement, preparation,
18 reproduction, and delivery of the documents requested pursuant
19 to the provisions of this section.

20 (2) No additional fees may be charged by the association for
21 the electronic delivery of the documents requested.

22 (3) Fees for any documents required by this section shall be
23 distinguished from other fees, fines, or assessments billed as part
24 of the transfer or sales transaction. Delivery of the documents
25 required by this section shall not be withheld for any reason nor
26 subject to any condition except the payment of the fee allowed
27 pursuant to paragraph (1).

28 (4) An association may contract with any person or entity to
29 facilitate compliance with the requirements of this subdivision on
30 behalf of the association.

31 (5) The association shall also provide a recipient authorized by
32 the owner of a separate interest with a copy of the completed form
33 specified in Section 1368.2 at the time the required documents are
34 delivered.

35 (c) (1) Unless the association notifies the *acquiring* owner of
36 a separate interest that the association acknowledges a transfer of
37 title, the *acquiring* owner shall, within 30 days of ~~transferring~~
38 *receiving* title, provide both of the following to the association's
39 board secretary, agent, manager, or designated representative:

1 (A) A copy of the owner's deed or other document transferring
2 title to the purchaser *acquiring owner* of the separate interest.

3 (B) Written notice of the purchaser's *acquiring owner's* mailing
4 address.

5 (2) This subdivision shall not apply to an owner, subdivider, or
6 agent subject to the requirements of Section 11018.6 of the
7 Business and Professions Code.

8 (d) (1) Except as provided in paragraph (2), neither an
9 association nor a community service organization or similar entity
10 may impose or collect any assessment, penalty, or fee in connection
11 with a transfer of title or any other interest except for the following:

12 (A) An amount not to exceed the association's actual costs to
13 change its records.

14 (B) An amount authorized by subdivision (b).

15 (2) The prohibition in paragraph (1) does not apply to a
16 community service organization or similar entity, or to a nonprofit
17 entity that provides services to a common interest development
18 under a declaration of trust, that is described in subparagraph (A)
19 or (B):

20 (A) The community service organization or similar entity
21 satisfies both of the following requirements:

22 (i) The community service organization or similar entity was
23 established prior to February 20, 2003.

24 (ii) The community service organization or similar entity exists
25 and operates, in whole or in part, to fund or perform environmental
26 mitigation or to restore or maintain wetlands or native habitat, as
27 required by the state or local government as an express written
28 condition of development.

29 (B) The community service organization or similar entity, or a
30 nonprofit entity that provides services to a common interest
31 development under a declaration of trust, satisfies all of the
32 following requirements:

33 (i) The organization or entity is not an organization or entity
34 described in subparagraph (A).

35 (ii) The organization or entity was established and received a
36 transfer fee prior to January 1, 2004.

37 (iii) On and after January 1, 2006, the organization or entity
38 offers a purchaser the following payment options for the fee or
39 charge it collects at time of transfer:

40 (I) Paying the fee or charge at the time of transfer.

1 (II) Paying the fee or charge pursuant to an installment payment
2 plan for a period of not less than seven years. If the purchaser
3 elects to pay the fee or charge in installment payments, the
4 organization or entity may also collect additional amounts that do
5 not exceed the actual costs for billing and financing on the amount
6 owed. If the purchaser sells the separate interest before the end of
7 the installment payment plan period, he or she shall pay the
8 remaining balance prior to transfer.

9 (3) For the purposes of this subdivision, a “community service
10 organization or similar entity” means a nonprofit entity, other than
11 an association, that is organized to provide services to residents
12 of the common interest development or to the public in addition
13 to the residents, to the extent community common areas or facilities
14 are available to the public. A “community service organization or
15 similar entity” does not include an entity that has been organized
16 solely to raise moneys and contribute to other nonprofit
17 organizations that are qualified as tax exempt under Section
18 501(c)(3) of the Internal Revenue Code and that provide housing
19 or housing assistance.

20 (e) Any person or entity who willfully violates this section is
21 liable to the purchaser of a separate interest that is subject to this
22 section for actual damages occasioned thereby and, in addition,
23 shall pay a civil penalty in an amount not to exceed five hundred
24 dollars (\$500). In an action to enforce this liability, the prevailing
25 party shall be awarded reasonable attorneys’ fees.

26 (f) Nothing in this section affects the validity of title to real
27 property transferred in violation of this section.

28 (g) In addition to the requirements of this section, an owner
29 transferring title to a separate interest shall comply with applicable
30 requirements of Sections 1133 and 1134.

31 (h) For the purposes of this section, a person who acts as a
32 community association manager is an agent, as defined in Section
33 2297, of the association.

34 *SEC. 2. Section 2924.1 is added to the Civil Code, to read:*

35 *2924.1. (a) Notwithstanding any other law, a sale of property*
36 *in a common interest development, as defined by Section 1351,*
37 *executed under the power of sale contained in any deed of trust*
38 *or mortgage shall meet all of the following requirements:*

39 *(1) Take place in the county where the property or a portion of*
40 *the property is located.*

1 (2) *The sale shall be made to the highest bidder at an auction*
2 *to be held Monday through Friday, between the hours of 9 a.m.*
3 *and 5 p.m.*

4 (3) *The sale shall be recorded within 30 days after the date of*
5 *sale in the office of the county recorder where the property or a*
6 *portion of the property is located.*

7 (b) *In the event that the trustee of a deed of trust or mortgage*
8 *fails to record a trustee's deed pursuant to paragraph (3) of*
9 *subdivision (a), the acquiring owner shall be liable for all liens*
10 *recorded pursuant to Section 1367 or 1367.1 that remain unpaid*
11 *on the foreclosed property.*

12 (c) *Any failure to comply with the provisions of this section shall*
13 *not affect the validity of a sale in favor of a bona fide purchaser.*